## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

JESUS CORONA GARCIA and	)
JANNET GOMEZ,	)
Plaintiffs,	)
V.	) Case No. CIV-19-166-D
MATT WHITAKER, Attorney General, et al.,	)
e. u,	)
Defendants.	, )

## **ORDER**

Before the Court is Plaintiffs' Motion to Voluntarily Dismiss pursuant to FED. R. CIV. P. 41(a)(1)(A)(i) [Doc. No. 18]. Although Plaintiffs have filed a motion to dismiss rather than a notice of dismissal, Plaintiffs have an absolute right to dismiss their case without prejudice since Defendants have not served an answer or filed a motion for summary judgment.

FED. R. CIV. P. 41(a)(1)(A)(i) provides for voluntary dismissal of an action by a plaintiff without a court order, subject to certain enumerated exceptions: "[T]he plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." None of the enumerated exceptions apply here. Further, under Rule 41(a)(1)(A), a voluntary notice of dismissal is "self-executing, i.e., it is effective at the moment the notice is filed with the clerk and no judicial approval is required." *Janssen v. Harris*, 321 F.3d 998, 1000 (10<sup>th</sup> Cir. 2003) (quoting Marex Titanic, Inc. v. Wrecked and Abandoned Vessel, 2 F.3d 544, 546

(4<sup>th</sup> Cir. 1993)).

Accordingly, Plaintiffs' motion to dismiss [Doc. No. 18] is GRANTED. This action is dismissed without prejudice. FED. R. CIV. P. 41(a)(1)(B). The Clerk is directed to close this case forthwith.

IT IS SO ORDERED this 12<sup>th</sup> day of June 2019.

TIMOTHY D. DEGIUSTI

UNITED STATES DISTRICT JUDGE